

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

MDL NO. 1456
Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO)
CLASS 1 RESIDENTS OF THE)
COMMONWEALTH OF)
MASSACHUSETTS)

Hon. Patti B. Saris

**THE J&J DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR POST-
REMAND MOTION FOR SUMMARY JUDGMENT AGAINST CLASS 1 RESIDENTS
OF THE COMMONWEALTH OF MASSACHUSETTS**

The J&J Defendants submit this Reply Memorandum in further support of their motion for summary judgment against Class 1 residents of the Commonwealth of Massachusetts.

Argument

The Court has already stated that its entry of judgment against Class 1 following the Track 1 trial was intended to apply to the residents of the Commonwealth of Massachusetts. Exh. 3 (10/08/09 Hrg. Tr.) at 6-7. Perhaps for that reason, Plaintiffs advance no specific arguments in opposition to the J&J Defendants' motion for summary judgment with respect to Massachusetts residents. Although Plaintiffs' opposition brief is nominally styled as a "Combined Opposition" to the J&J Defendants' "motions," Plaintiffs do not explain why, in the absence of a right to a jury trial, this Court should schedule another bench trial on claims asserted by Massachusetts residents under Mass. Gen. Laws Ch. 93A. In fact Plaintiffs do not even cite to Ch. 93A in their opposition papers. *See* Plaintiffs' Combined Opposition Memo. at v-vii (listing the statutes relied upon).

Instead, all of the arguments in Plaintiffs' opposition papers are directed at convincing the Court that a jury could find in Plaintiffs' favor under other states' laws. Whatever the merits of those arguments, they do not apply to claims brought under statutes that do not permit a trial by jury. As such, they do not provide any basis upon which to deny the J&J Defendants' motion with respect to the residents of Massachusetts.

Conclusion

Plaintiffs do not advance any arguments that would justify reconsideration of this Court's stated intention to enter judgment in favor of the J&J Defendants against Class 1 residents of Massachusetts. For that reason, and for the reasons set forth in the J&J Defendants'

initial motion papers, the J&J Defendants' Massachusetts-specific motion for summary judgment should be granted.

Dated: January 29, 2010

/s/ Andrew D. Schau

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CERTIFICATE OF SERVICE

I certify that on January 29, 2010 a true and correct copy of the foregoing was delivered via electronic service to all counsel of record pursuant to Case Management Order No. 2.

/s/ Andrew D. Schau

Andrew D. Schau